

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

TITUS HENDERSON,

Plaintiff,

v.

Case No. 19-cv-749

JIM SCHWOCHERT, *et al.*,

Defendants.

ORDER

On May 20, 2019, *pro se* plaintiff Titus Henderson filed a complaint under 42 U.S.C. § 1983, alleging that the defendants violated his civil rights at the Wisconsin Secure Program Facility. (ECF No. 1.) On October 9, 2019, following Henderson’s consent to magistrate judge jurisdiction, the court screened the complaint and ordered the Clerk of Court to electronically serve the Wisconsin Department of Justice (“DOJ”) under the court’s informal service agreement with the DOJ. (ECF Nos. 4, 10.) On November 11, 2019, the DOJ accepted service on behalf of all properly named defendants except Thomas Brown, who died on March 24, 2018. (ECF No. 12.) The DOJ consented to magistrate judge jurisdiction on November 26, 2019, and filed an answer to the complaint on December 6, 2019. (ECF Nos. 14-15.)

Under Federal Rule of Civil Procedure 25(a)(1), Henderson may still have claims against Brown that are not yet “extinguished.” *See Adams v. Larson*, No. 18-CV-1557-PP-WED, 2019 WL 2517870, at *2 (E.D. Wis. June 18, 2019) (internal

citations omitted). As a general rule, however, “the substitution of parties consistent with Rule 25(a)(1) cannot be ordered ‘where the person for whom the substitution is sought died prior to being named a party.’” *Id.* Because Brown died prior to being named a party in this lawsuit, the court cannot use Rule 25(a)(1) to substitute for him. Therefore, the court will dismiss Brown from this lawsuit.

NOW, THEREFORE, IT IS ORDERED that Thomas Brown is **DISMISSED** from this lawsuit.

Dated at Milwaukee, Wisconsin this 9th day of December, 2019.

A handwritten signature in black ink that reads "William E. Duffin". The signature is written in a cursive style and is positioned above a horizontal line.

WILLIAM E. DUFFIN
U.S. Magistrate Judge